IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

CRL.A.No. 993 of 2002()

SC.526/1999 of ADDL.SESSIONS COURT (AD HOC-I), KASARAGOD

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APPELLANT: ACCUSED:

B.BALAKRISHNAN,
S/O.NARAYANA NANIYANI,
ERNAD VILLAGE, NAIKAP, KASARAGOD.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

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1. THE EXCISE INSPECTOR,
KUMBLA RANGE, KASARGOD.

2. STATE REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A. No. 993 of 2002

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Dated this the 2nd day of March, 2007

J U D G M E N T

PW.1, the preventive officer of Kumbla Excise Range, and party, detected the appellant, the accused, in Sessions Case No.526/1999 on the file of Additional Sessions Court (Ad hoc-I), Kasaragod, standing with MO.5 plastic bag at Kumbla bus stand waiting shed, Kasaragod, on 12/12/1997, at about 8.50 a.m.. MO.5 plastic bag was seized by PW.1 and, on examination, it was found containing six bottles of Boss whisky, each bottle of 750 ml., and three bottles of Royal Oak Fine whisky, each bottle of 375 ml. Exhibit P1 occurrence report was prepared by PW.1 and samples were taken from both brands. Exhibit P4 is the chemical analysis report. It was found containing ethyl alcohol in different volume. Therefore, PW.3, the Excise Inspector, had filed the final report on completion of the investigation.

2. The prosecution examined three witnesses and marked four documents together with five material objects which were identified. On appreciation of the evidence, the

learned Additional Sessions Judge found the accused guilty and, therefore, convicted and sentenced him to undergo rigorous imprisonment for four years and also to pay a fine of rupees one lakh, in default to undergo rigorous imprisonment for one year. The same is under challenge through this appeal by the convicted accused.

3. When the appeal came up for consideration, the learned counsel for the appellant-accused submitted that, out of the six bottles of Boss whisky, sample of 300 ml alone was taken and the balance was produced before the court, as could be seen from MO.4. Thus, the entire seized bottles of Boss whisky had not been subjected to chemical analysis, to establish that they are liquor and hence was in excess quantity, possessed by the appellant. Similarly, it is also contended that out of three bottles of Royal Oak Fine whisky, one bottle of 300 ml alone were found having sent for chemical analysis, as is found in Exhibit P4 chemical analysis certificate. The total quantity thus seized, though comes to 5.625 litres, the chemical analysis report reveal that only 600 ml of liquor alone was established as having possessed by the accused appellant. Hence, in view of the legal

principle laid down in **Krishnankutty vs. State of Kerala** [2005(3) KLT 568], the prosecution did not establish that the petitioner was in possession of the quantity in excess of the permitted quantity, which was 1.5 litres at the relevant time, as per the order passed by the Government. I agree with the arguments advanced by the learned counsel for the appellant that the prosecution has failed to establish that the appellant was in possession of liquor, as defined under Section 3(10) of the Act, and that he was in possession of 5.625 litres of liquor.

4. In the above circumstances, I find that the conviction and sentence passed by the court below are unsustainable. Hence, I set aside the impugned judgment as well as the conviction and sentence. The bail bond executed by the appellant is hereby cancelled and he is set at liberty forthwith.

The appeal is allowed as above.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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Crl.A. No. 993 of 2002

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J U D G M E N T

2nd March, 2007